IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1452 OF 2003

The State of Maharashtra ...Appellant.

V/s

Smt. Fatima Mohammed Shah ...Respondent.

Mr. A.M. Shringarpure, APP for the appellant - State.

Mr. A.M. Sarogi for the respondent.

CORAM: V.M. KANADE, J.
DATE : 10th December, 2004

P.C.

1. Heard the learned APP for the State and the learned Counsel appearing on behalf of the respondent.

2. State has filed this appeal challenging the Judgment and Order passed by the Metropolitan Magistrate, 44th Court, Andheri Mumbai. By the said judgment and order, the learned Magistrate acquitted the accused of the offence punishable under section 420 of the Indian Penal Code.

3. Prosecution case in brief is that the complainant had paid an amount of Rs 2,00,000/- towards purchase of Flat and an agreement was executed to that effect. However, subsequently, the said Flat was sold to third party and when the complainant demanded return of the amount which was paid by her, that amount was not paid

by the accused.

4. The learned APP has taken me through the Judgment and Order of the Trial Court as also depositions of the prosecution witnesses. The complainant has not produced the agreement of sale and the said document has not been proved. Investigating Officer has admitted in his evidence that he had recorded F.I.R. after obtaining xerox copy of the agreement of sale. There is no evidence to show that the amount of Rs 2,00,000/- was paid to the accused. In fact, in her evidence, the complainant had admitted that the said amount of Rs 2,00,000/- was paid and the alleged agreement of sale was executed as a security for the loan which was given by her.

5. In the absence of any concrete evidence to show that the amount was paid, it is not possible to accept the prosecution case. The Trial Court, in my view, has correctly assessed the evidence and has acquitted the accused of the offence punishable under section 420 of the Indian Penal Code. Leave is refused.

Appeal is dismissed.

V.M. KANADE, J.